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PATENT APPLICATION SPW

Applicants : Junzo SUNAMOTO et al

Title : COSMETIC PRODUCT CONTAINING  
POLYSACCHARIDE-STEROL DERIVATIVE

Serial No. : 09/936 953 Group: 1617

Confirmation No.: 4435

Filed : September 17, 2001 Examiner: Chong

International Application No.: PCT/JP00/02044

International Filing Date : March 30, 2000

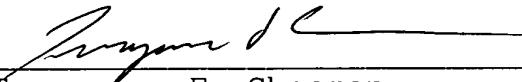
Atty. Docket No.: Yanagihara 62

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**FIRST CLASS MAILING CERTIFICATE**

Sir:

I hereby certify that this correspondence is being deposited with the United States Postal Service under 37 CFR 1.8 as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on April 25, 2006.

  
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Correspondence: Reply Brief  
dated April 25, 2006  
including enclosures listed thereon

190.05/05



PATENT APPLICATION

IN THE U.S. PATENT AND TRADEMARK OFFICE

April 25, 2006

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**REPLY BRIEF**

Sir:

This Reply Brief is filed pursuant to the provisions of 37 CFR §41.41 to respond to arguments made in the Examiner's Answer dated March 1, 2006.

In the Examiner's Answer, the Examiner states that it would have been obvious to one of ordinary skill in the art to use the pullulan-steroid compositions of Sunamoto et al in the cosmetic water-in-oil emulsions of Ishiwatari et al as pullulan-steroid compositions had previously been used in the formulation of emulsions (and liposomes) and that the pullulan-steroid emulsions exhibited improved chemical and physical stabilities.

Applicants wish to point out that page 6, first full paragraph, of the English translation of Sunamoto et al discloses that the target polysaccharide-steroid derivatives are used as coatings for liposomes or oil droplets. That is, the polysaccharide-steroid derivative in Sunamoto et al were arrived at in order to overcome a problem in that when conventional polysaccharide derivatives were used to coat liposomes or emulsions, the negative charge of the carboxyl

groups would adversely effect the physical/chemical stabilities and cell specificity and compatibility of the polysaccharide-coated liposomes or emulsions. Therefore, the polysaccharide-steroid derivatives of Sunamoto et al are not part of the oil-and-water liposomes or emulsions, they are coatings which encapsulate the liposomes or emulsions.

In contrast to the Sunamoto et al reference, the Ishiwatari et al reference is concerned with forming oil-in-water emulsified compositions. As pointed out by the Examiner, Ishiwatari et al discloses in Column 10, lines 55-67, that the addition of a water-soluble high polymer, such as a polysaccharide, to the oil-in-water emulsified composition of this reference results in the composition having better long-term stability. Given the difference in the purposes of the polysaccharide-sterol derivative in Sunamoto et al and the polysaccharide stabilizing agent in Ishiwatari et al, one of ordinary skill in the art would not attempt to use the polysaccharide-steroid derivatives of Sunamoto et al as a stabilizer in the composition of Ishiwatari et al.

The polysaccharide-sterol derivatives of Sunamoto et al are used to coat and encapsulate compositions such as formed in Ishiwatari et al. However, they are not intended to be a part of the oil-in-water composition as the polysaccharides are in Ishiwatari et al. Since the polysaccharide-sterol derivatives of Sunamoto et al are used to encapsulate oral-in-water compositions, if they were added to the compositions of Ishiwatari et al in place of the polysaccharides, they would destabilize the oil-in-water emulsified composition as opposed to stabilizing it. Therefore, the teachings of Sunamoto et al and Ishiwatari et al actually teach away from making the substitution suggested by the Examiner.

The presently claimed invention is directed to a composition comprising cosmetic components, a solvent and the pullulan-cholesterol derivative. While it may be obvious to

use the polysaccharide-steroid derivative of Sunamoto et al as a means of coating or encapsulating the oil-in-water emulsified composition of Ishiwatari et al, Appellants wish to point out that the polysaccharide-sterol derivative of Sunamoto et al would not be part of the composition disclosed in Ishiwatari et al. Therefore, Appellants' respectfully submit that the Examiner has not even made a showing of prima facie obviousness under 35 USC 103(a) of the presently claimed invention.

In the Examiner's Answer, the Examiner has stated that the intended use of the present composition has no effect on the patentability thereof. Appellants respectfully submit that when determining whether the composition of the present invention has unexpectedly superior properties, the intended use of the composition must be considered. As pointed out in the Appeal Brief and during prosecution, there is objective evidence of record in the present application which is sufficient to rebut any showing of prima facie obviousness under 35 USC 103. Transcription tests are contained in the present specification for oil/water type milky lotions in Table 1, a test for improving artificial rough skin by an oil/water type milky lotion in Table 2, a practical application test with an oil/water type milky lotion in Table 3, a test for assessing the effect of a hair-lotion in Table 5, a transcription test for a liquid lip rouge in Table 6 and a test for assessing a colored manicure liquid in Table 7. When compared with the results of the Comparative Examples, the presently claimed compositions clearly had unexpectedly superior transcription properties. Nothing in the references cited by the Examiner suggest that such a result would be achieved and, as such, it is respectfully submitted that the patentability of the presently claimed invention over the prior art has been established.

Favorable consideration is respectfully solicited.

Respectfully submitted,



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